

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

ELITE LOGISTICS SERVICES, INC.,	§	
ET AL.	§	
	§	
VS.	§	CIVIL ACTION NO. G-02-866
	§	
ATX TECHNOLOGIES, INC., ET AL.	§	

OPINION AND ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge which addresses the Motions for Summary Judgment of Defendants ATX Technologies, Inc. (ATX) and Bobby Ford, Inc.. The Magistrate Judge recommended that ATX' s motion be granted in part and denied in part. He recommended that Bobby Ford' s motion be denied. Following the issuance of the Report and Recommendation, ATX filed a " Motion to Clarify and Reconsider the Report and Recommendation on Summary Judgment"; its " Objections" to the Report and Recommendation; and its " Motion to Postpone the Court' s Ruling on Summary Judgment" to allow the Magistrate Judge time to rule on the Motion for Reconsideration. Bobby Ford, too, filed a " Motion for Reconsideration" and its " Objections." Plaintiffs, collectively, " Elite" have, of course, filed appropriate responses. Having now carefully reviewed this voluminous file and considered all pending matters *de novo*, the Court issues this Opinion and Order.

ATX correctly points out that there is an inconsistency in the Report and Recommendation concerning its potential liability for contributory infringement attributable to the " On Guard Tracker" system. However, it is clear to this Court that the Magistrate Judge intended to

recommend that Elite' s claim for contributory infringement as to the “ On Guard Tracker” survive summary judgment. ATX claims that even if the Magistrate Judge intended such a recommendation, the evidence show that there can be no liability because it had no notice of Elite' s patent until after it ceased to sell the “ On Guard Tracker” system. This may well be the case, however, ATX never clearly raised this argument in its Motion for Summary Judgment and the Court will not entertain it now. Accordingly, the Court will **REJECT** the Report and Recommendation (Instrument no. 89) only insofar as it mistakenly recommended dismissal of this claim. If, at trial, the evidence clearly negates any such liability because of the lack of notice to ATX, the Court will dismiss the claim at that time.

ATX has raised another argument for the first time: it claims Elite has presented no evidence that ATX' s subscribers have actually used its base communications unit. The Court finds this argument to be amusingly ridiculous. The Court is compelled to draw all reasonable inferences from the evidence in Elite' s favor. Under this standard the Court must, at the very least, “ infer” that ATX' s paying subscribers have called the base communications unit from time to time to request assistance. This silly objection is **REJECTED**.

The remainder of the Report and Recommendation (Instrument no. 89) is hereby **ACCEPTED** by this Court in its entirety and incorporated by reference herein.

It is, therefore, **ORDERED** that the Motion for Summary Judgment (Instrument no. 79) of ATX is **GRANTED** insofar as it seeks dismissal of Elite' s claim of contributory infringement of Claim 8, except as to the “ On Guard Tracker” system, and any infringement of Claim 9.

It is further **ORDERED** that the Motion for Summary Judgment (Instrument no. 79) of ATX is **DENIED** insofar as it seeks dismissal of Elite' s claim of infringement and/or induced infringement of Claim 8.


It is further **ORDERED** that the Motion for Summary Judgment (Instrument no. 76) of Bobby Ford is **DENIED**.

It is further **ORDERED** that the Defendants' Motions for Reconsideration (Instrument nos. 90 and 91) are **DENIED as moot**.

It is further **ORDERED** that ATX' s Motion to Postpone a Ruling on Summary Judgment (Instrument no. 94) is **DENIED**.

It is further **ORDERED** that this cause is **RETURNED** to the Magistrate Judge for all further pretrial proceedings.

DONE at Galveston, Texas, this 13th day of January, 2006.



Samuel B. Kent
United States District Judge